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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/601,311	08/04/2000	Yoshihiro Ishikawa	195466US2PCT	8290

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1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

VOLPER, THOMAS E

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/601,311

Applicant(s)

ISHIKAWA, YOSHIHIRO

Examiner

Thomas Volper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 6-10 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-5, in Paper No. 7 is acknowledged. The traversal is on the ground(s) that examining claims 1-15 would not place undue burden on the Examiner. This is not found persuasive because Group I is directed to traffic control of a system for mobile communications, which is classified in class 370, subclass 329. Groups II and III are directed to a base station device and a mobile station device, which are classified in class 455, subclasses 561 and 550.1, respectively, which clearly demonstrates separate classification between a system and physical components that may be present in that system. A base station device and a mobile station device are separate physical components that may be present in a mobile communication system. Such features as a transmission time control unit, present in claims 9 and 14, which fall into Groups II and III, respectively, begin to draw the scope of those Groups around details that are not necessary for the description of the system as a whole. In addition, each of Groups II and III has a separate utility as described in the restriction requirement below.

The requirement is still deemed proper and is therefore made FINAL.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-5, drawn to a traffic control method in a mobile communication system, classified in class 370, subclass 329.
 - II. Claims 6-10, drawn to a base station device, classified in class 455, subclass 561.

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III. Claims 11-15, drawn to a mobile station device, classified in class 455, subclass 550.1.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the method relates to controlling traffic in a communication system as a whole. The subcombination has separate utility such as base station for performing location monitoring.

4. Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the method relates to controlling traffic in a communication system as a whole. The subcombination has separate utility such as a mobile phone for making a call to another mobile phone.

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5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Applicant's admitted prior art (pages 1-2 of the Specification).

Regarding claim 1, Applicant admits as prior art the features of carrying out communication between a mobile radio terminal and a radio base station using a common channel and an individual channel, and based on an admission judgment, shifting from the common channel to the individual channel when the communication traffic at the mobile terminal shifts from a sparse state to a dense state (2nd paragraph under "Background Art").

Regarding claim 2, Applicant admits that the admission judgment is carried out at the radio base station based on an uplink interference amount and a downlink transmission power level, or at the mobile radio terminal based on receiving information on the uplink interference amount and the downlink transmission power level (3rd paragraph under "Background Art").

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art (pages 1-2 of the Specification) as applied to claims 1 and 2 above, and further in view of Kumar et al. (US 6,418,148).

Regarding claims 3-5, Applicant's admitted prior art fails to expressly disclose waiting a prescribed period of time for restarting an individual channel set up operation, which is determined according to a random number and different from the timing for restarting set up for other mobile radio terminals. Kumar discloses receiving a request for a supplemental channel, which is analogous to an individual channel, and if the request cannot be satisfied, the node that submitted the request is asked to resubmit its request after a random back-off period (col. 9, lines 4-19). Figure 3 shows that the back-off periods for different nodes may be set to different periods of times. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to reject requests at the radio base station of Applicant's admitted prior art if no resources were available for a particular request, and to wait a random period of time before retrying. One of ordinary skill in the art would have been motivated to do this in order to assign the mobile radio terminal requesting an individual the necessary resources when they became available, and to limit contention between different mobile radio terminals that may request resources at the same time.

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Conclusion

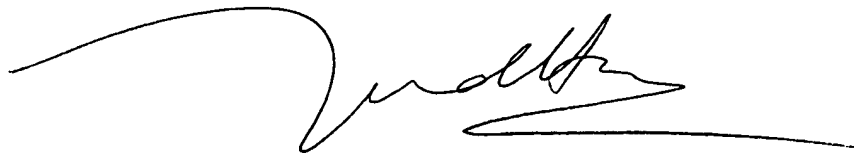
10. Any inquiry concerning this communication, or earlier communications from the examiner should be directed to Thomas Volper whose telephone number is 703-305-8405 and fax number is 703-746-9467. The examiner can normally be reached between 8:30am and 6:00pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu, can be reached at 703-308-6602. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.

Thomas E. Volper



April 19, 2004



HUY D. VU
SUPERVISORY PATENT EXAMINER
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